

THE DEPOSITION OF JUDY TULL
CASE NO: 12-40944-MSH, CHAPTER 7

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- 1 airplanes, and we don't know the difference. So
2 we lost our company to somebody who did nothing
3 but lie.
- 4 Q: You were just talking about Direct Air as being a
5 producing company.
- 6 A: It was. It produced a lot of passenger and a lot
7 of economic growth to this community and to
8 Florida.
- 9 Q: But it had a deficit of 12 million dollars.
- 10 A: It wasn't -- Yes, it did. But it was going to be
11 ---
- 12 Q: I'm sorry. You don't understand how it got to be
13 ten million ---
- 14 A: That's right.
- 15 Q: --- dollars short, right?
- 16 A: That's correct. Let me ---
- 17 Q: Do you know if anybody at Direct Air understood
18 why it was 12 million dollars short?
- 19 A: I don't think so.
- 20 Q: And you've had discussions ---
- 21 A: Yes.
- 22 Q: --- with all of the founding members ---
- 23 A: We have all been working on it for years.
- 24 Q: How did you think an acquiring entity was going
25 to correct it if nobody knew how you got there?

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1 out what the net credit card airfares were, where
2 the airfare's paid by credit card.

3 A: Okay.

4 Q: Because that's the money that should've -- credit
5 cards were what went to Valley National Bank.

6 A: Right.

7 Q: And the only thing that had to remain in there
8 was the airfare component.

9 A: The net airfare.

10 Q: So if we were able to find from Radixx,
11 hypothetically, a number that represented
12 payments made by credit card for only the airfare
13 component, that should tell you what should be in
14 the escrow account at any particular time, right?
15 If you could find that information, that's the
16 information to give you the number, right? And
17 then you were talking about additional things you
18 can subtract out of that, but that's your
19 starting point for what should be in your escrow,
20 right?

21 A: Say that again.

22 Q: So your starting point for your escrow, and I'm
23 not talking about the less prepaid fuel and the
24 things like that, I'm talking about your starting
25 point, ---

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1 BY MR. REGAN:

2 Q: Separately from, you would've requested that ---

3 A: No. It was done -- The way -- Bob did it when he
4 did the financials, when he pulled from --

5 Remember, I told you he pulled the, the, the, on
6 the financials, he pulled the -- What's the word
7 I'm looking for? I'm losing words. What's the
8 ---

9 BY MS. MURPHY:

10 Q: He pulled the baggage?

11 A: Yeah. But what's the -- Ancillaries, he pulled
12 the ancillaries into the report, and that's,
13 that's when it was reported.

14 BY MR. REGAN:

15 Q: But in practice, did you take out baggage fees
16 prior to customer travel or did that usually come
17 out when you finally requested the funds after
18 completion of the flight?

19 A: It came, it, it would normally come out with, on
20 the crosstab report when you pulled your
21 releases, and it has the, the ancillaries and it
22 has your taxes and stuff like this, on a weekly
23 basis.

24 Q: And what was your basis for considering baggage
25 fees and other taxes as categories of funds that

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1 did not need to remain in escrow?

2 A: It's not airfare. They didn't even exist when
3 the rules and regulations, like the Part 380,
4 were written.

5 Q: My only question is, what's the basis for that
6 understanding, just your review of the
7 regulations?

8 A: Yeah. It's not airfare. Unless it's airfare, it
9 doesn't have to be escrowed.

10 Q: And that's based on your own reading of the
11 regulations?

12 A: Right. But if you wanted to, you could charge
13 them cash at the airports and you, you never
14 would even have to run it through the escrow,
15 through Valley if you didn't want to because it
16 doesn't have to be escrowed. They usually, when
17 they booked, didn't buy their bag at the same
18 time they booked their record. They would call
19 back and book their airfare. They would book
20 their airfare and then like the week that they
21 were going to go, they would call back and say,
22 "I'm going to take one bag," or two bags, because
23 they didn't know at the time that they booked the
24 number of bags they were going to take. So
25 normally what happened is when you pulled your

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EXHIBIT 9

Direct Flights with Non Stop Memories ...



Southern Sky Air & Tours, Inc. DBA Myrtle Beach Direct Air & Tours

September 14, 2006

To: Bob Halagarda/Lori Rooney
Valley National Bank

From: Judy Tull
Southern Sky Air & Tours dba Myrtle Beach Direct Air & Tours

Subject: Southern Sky Air & Tours, dba Myrtle Beach Direct Air & Tours

Southern Sky Air & Tour, Inc. (the "Company"), dba Myrtle Beach Direct Air & Tours, is a charter air service offering all inclusive vacation, golf, and entertainment packages. Scheduled Public Charter Service to Myrtle Beach will commence in March 2007. We are in the process of finalizing our charter air contract with Sky King Airlines. Once the air contract is finalized I will forward DOT paperwork. I am working with Stan Veron at Machen Enterprises for our \$200,000 DOT Letter of Credit. Additionally we are working with Coastal Federal Bank in Myrtle Beach who will be the merchant processing bank. All transactions will be processed through the Radlxx computer with funds dropping directly into the escrow account.

The company is owned and managed by a core management team consisting of five experienced men and women who have extensive experience in finance and the tour operator / aviation industry both in domestic and international operations. The company's corporate office is in Myrtle Beach.

Southern Sky Air & Tours™, Inc operates a Reservation / Call Center located in Beckley, West Virginia, with equipment provided for use by two of the Southern Sky Air & Tours™ partners. The center is capable and has handled as many as 20,000 incoming calls per day supporting as many as 100 reservation/sales agents on-line simultaneously. Information will be stored on privately owned server computers, linked to the Internet via high bandwidth routers. Data will be managed through sophisticated database depositories that will dynamically serve web pages and responses to information requests.

MANAGEMENT

The Company has assembled an experienced management and development team accomplished in the fields of tour operations and packaging, aviation charters and services, finance, marketing, technology, and general management.

Judy Tull - Chief Executive Officer

Ms. Judy Tull, Chief Executive Officer, heads the team. Ms Tull has over 30 years of experience in the aviation industry including executive positions with both airlines and tour operators. She has extensive experience in aviation contract negotiations, marketing, media planning, flight scheduling, operations, pricing and station management. Ms. Tull was a co-founder of World Technology Systems which operated public charter programs Sunjet and Myrtle Beach Jet Express between New York City and Florida and Myrtle Beach moving over 6,000 people per day. Recently she played a key role and was instrumental in developing and managing the Hooters Air scheduled charter program.

Ed Warneck - President

Edward Warneck, a seasoned veteran of entrepreneurial management, will assist in overseeing day-to-day operations. Currently he is Chief Operating Officer/President of Championship Golf Tours and Wall Street Golf and Hospitality Association. Previously was a partner of Focus Strategies, Inc., specializing in marketing and fulfillment in the golf and hospitality industry. Mr. Warneck will manage and coordinate package development, marketing, and Strategic Partner alliances.

Mr. Warneck has successfully owned and directed a leading all-inclusive golf packaging business since 1985. Besides the thousands of golfers booked by his companies, Championship Golf Tours has been the leading independent provider of passengers for Air South, Myrtle Beach Jet Express, and most recently, Hooters Air. He has a deep understanding of markets.

VNB 00016

and packaging in the golf and hospitality industries. With a history of creative marketing, he has made a significant mark in forming strong relationships with businesses within and outside Myrtle Beach. Many businesses seek his out-of-the box thinking.

Robert Kellman - Chief Financial Officer

Bob has been in the corporate arena his entire career. Bob, a CPA, worked six years with Deloitte & Touche and 23 years at Corporate Headquarters, Bank of New York, the last 17 years as their Comptroller/ Sr. Vice President. Heavily involved with business planning and expense controls many as a result of mergers and acquisitions. Bob also was a member of numerous of Directors and sat on many board committees. His corporate business background rounds out our groups increased focus understanding corporate preferences and requirements for corporate entertaining, meetings, conferences, and strategies to enhance and strengthen business relationships and cost saving solutions. After retiring from the Bank of New York, Bob worked with partner Ed Warneck, Wall Street Golf & Hospitality Association. Bob was involved in the development of all operations business.

Kay Ellison - Vice President System Operations
Marshall Ellison - Vice President Reservations & Technology

Over the past 20 plus years, this husband/wife team have owned and operated successful tour operations to resort destinations. Their extensive experience in the tour operation industry have contributed into becoming a leader in providing aviation out-sourcing services. Both have been recognized for their knowledge in vacation packaging, airline reservations, operations and aviation services and support. They have provided reservations services, customer service and airport support to World Technology for the public charter program of Sunjet, Myrtle Beach Jet Express, Transmeridian, Nations Air, Kiwi Air, Carnival Airlines and Air Jamaica Vacations and more recently to Hooters Air. They have hired, trained and directed the daily performance of over 500 employees in a national call center, handling over 20,000 calls per day. They also have extensive experience in developing aviation software.

Southern Sky Air & Tours™ is in a start-up position. Currently we do not have a financial statement as we are finalizing all agreements. Southern Sky Air & Tours™ has received private cash investments of \$400,000.00 and a line credit of \$600,000.00 with a local community bank. We are in the process of opening bank accounts. Our attorney, Clay Brittan, is handling the paperwork.

The following are our personal and business references:

The Creel Corporation - Alicia Bame, Jim Creel
MB Chamber of Commerce - Brad Dean
MB Golf Holiday - Mickey McCamish
MB National Group - Matthew Brittan
Coastal Federal Bank - David Roe - Sr. Vice President - Business Banking Resource Group

We are requesting you to send paperwork so that we may proceed.
Thank you in advance for your assistance.

Sincerely,

Judy Tull
CEO

Contact Info: Judy Tull - Cell 770-366-2018
Fax 843-293-7506

After review, please forward all necessary paperwork.

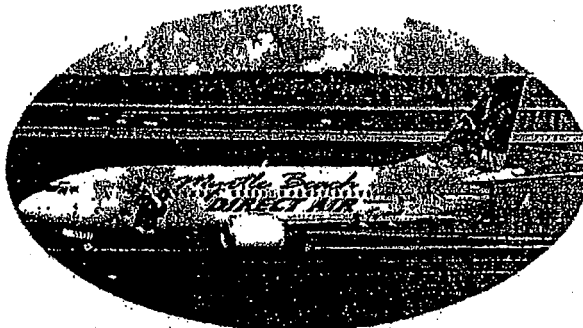


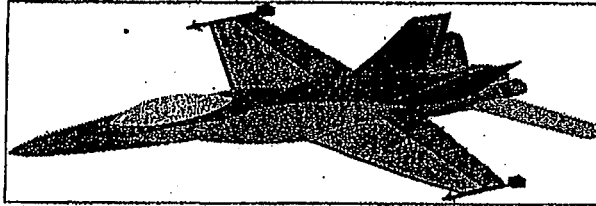
EXHIBIT 10

FACSIMILE COVER SHEET

VALLEY NATIONAL BANK

DATE

9/15/06



PLEASE DELIVER TO:

NAME:

JUDY TULL

COMPANY:

SOUTHERN SKY AIR

FAX NO:

843 293 7506

FROM:

VALLEY NATIONAL BANK

GLOBAL ESCROW

TEL:

212-973-6532

FAX: 212-840-7038

212-973-6534

Bob Halagarda

COMMENTS:

① AGREEMENT

② w 9

③ CORPORATE RESOLUTION

NUMBER OF PAGES INCLUDING COVER SHEET:

17

Bob

CONFIDENTIALITY: THIS MESSAGE IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN CERTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE BY MAIL. THANK YOU.

COMMERCIAL DEPARTMENT
RESOLUTION OF DIRECTORS REGARDING BANK ACCOUNT AND AUTHORIZED PARTIES

Southern Sky Air Tours dba Myrtle Beach Direct Air Tours
(Name of Corporation)

I HEREBY CERTIFY to VALLEY NATIONAL BANK, that a meeting of the Board of Directors of Myrtle Beach Direct, a corporation organized under the laws of the State of South Carolina duly called and held at the office of said corporation, No. 205229162 in the city of Myrtle Beach State of South Carolina on the 30th day of June, 2006.

The following resolutions were duly adopted and are now in full force and effect:

DEPOSITS
AND
WITH-
DRAWALS

RESOLVED, that said Valley National Bank (hereinafter designated as the Bank), be designated as a depository of this corporation and that funds of this corporation deposited in said Bank be subject to withdrawal upon checks, notes, drafts, bills-of-exchange acceptances, undertakings or other orders for the payment of money when made, signed, drawn, accepted or endorsed on behalf of this corporation by the following officers and persons, to wit:

Judy Tull, CEO - Ed Warrick - President - Robert Keilman, CFO

(Titles of officers and/or other persons authorized to sign each of the above instruments; e.g. president, treasurer, etc.)

all may do singly
(also please indicate in what manner they are to sign the various instruments; singly, any two or jointly, etc.)

RESOLVED, that the Bank is hereby authorized to pay any such instruments and also to receive the same from the payee or any other holder without inquiry as to the circumstances of issue or the disposition of the proceeds even if drawn to the individual order of any signing officer or person, or tendered in payment of his individual obligation.

LOANS
CREDITS
AND
SECURITY

RESOLVED, that the following officers of the corporation and persons, to wit:

Judy Tull, CEO, Ed Warrick - President, Robert Keilman - CFO

(Titles of officers and/or other persons authorized to borrow money and obtain credit; e.g. president, treasurer, etc.)

Jointly
(also please indicate in what manner they are to sign the various instruments; singly, any two or jointly, etc.)

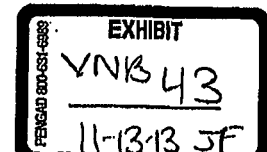
are hereby authorized on behalf of this corporation to borrow money and to obtain credit for this corporation from the Bank on such terms as may see, to them advisable, and to make deliver

notes,

drafts, acceptances, agreements and any other obligations of this corporation therefore in form satisfactory to the Bank, and as security to pledge or assign and deliver stocks, bonds, bills property held by or belonging to this corporation, with full authority to endorse, assign or guarantee the same in the name of this corporation to exercise and deliver all instruments and affix the corporate seal; and also to discount with the Bank or sell to the Bank any bills receivable or other negotiable paper held by this corporation with full authority to endorse the same in the name of this corporation.

RESOLVED, that Stanley Marshall Ellison Secretary of this corporation, be and is hereby authorized to certify to the Bank the names of the present officers of the corporation, and other persons authorized to sign for it and the offices respectively held by them, together with specimens of their signatures, and in case of any change of any holder or holders of such offices, the fact of such change and the names of any new officers and offices respectively held by them, together with specimens of their signatures; and

BE IT FURTHER RESOLVED, that the Bank be promptly notified in writing of any change or any holder or holders of such offices, and until so notified and receipt acknowledged by the Bank



I HEREBY CERTIFY that the present officers of the corporation and the offices respectively held by them are as follows:

IN WITNESS WHEREOF, I have hereunto set my hand as Secretary of said corporation and Affixed the corporate seal this _____ day of _____ 20____

[illegible]

EXHIBIT 11

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

Southern Sky Air & Tours,) Case No.: 12-40944-MSH
LLC, d/b/a Direct Air,) Chapter 7
Debtor,)

COPY

**THE RULE 2004 EXAMINATION OF
ED WARNECK**

Thursday, November 7, 2013
9:08 a.m. - 4:04 p.m.

The Rule 2004 Examination of ED WARNECK, taken on behalf of the Joseph H. Baldiga, Chapter 7 Trustee, at the law offices of Boyd Goldfinch Law Firm, LLC, located at 11019 Tournament Boulevard, Murrells Inlet, South Carolina, on Thursday, November 7, 2013.

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1 above water.
2 Q: Is that through a specific media source, is ---
3 A: No. It's with a printing company, Minuteman
4 Press.
5 Q: Have those been your only employment since Direct
6 Air closed?
7 A: Yes.
8 Q: While Direct Air was in operation, did you work
9 for anybody else?
10 A: No.
11 Q: Prior to Direct Air, what was your employment?
12 A: I was, owned my own companies, a company called
13 Championship Golf Tours and another company
14 called Wall Street Golf & Hospitality, and I was,
15 I took on partners. In the Wall Street Golf &
16 Hospitality, I was partners with Bob Keilman, and
17 Championship Golf, I started that company in 1984
18 or '85, and it was a golf packaging, providing
19 events and tournaments and golf vacations in
20 tourist destinations, and Wall Street Golf was
21 more focused on doing corporate entertaining,
22 running events and assisting in events for them,
23 obviously in the Wall Street market.
24 Q: Did either of those companies sell airfare as
25 part of their packages?

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- 1 asked, how did it get to that magnitude without
2 your oversight and supervision, because you were
3 a part owner of the company, correct?
4 A: Yes, well, yes.
5 Q: And it was during your tenure as a part owner of
6 the company that there was at least a 12 million
7 dollar shortfall in the escrow account, correct?
8 A: So I hear, yes.
9 Q: Getting back to ---
10 A: But that was not my obligation to the company.
11 My, my role in the company, first of all, as a
12 partner, which was prior to September 29th,
13 although my title was president and marketing
14 director, that's where my role was, strictly in
15 marketing. It was not involved at all in the
16 operations of the company. It was not involved
17 in any of the financial decisions of the company.
18 My role was strictly marketing and growing the
19 airline, and that's what I did.
20 Q: You held the title of president after the
21 Avondale acquisition, correct?
22 A: Temporarily, temporarily.
23 Q: And you're saying during that time the title of
24 president didn't mean anything?
25 A: Didn't mean anything. It didn't mean anything

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- 1 when I was with Direct Air.
- 2 Q: Did you hold the title of president of Direct
- 3 Air, as well?
- 4 A: Prior to the sale, yeah; and after the sale for a
- 5 few months; but that was changed over to Kay.
- 6 Kay and Judy became members of that board. Kay
- 7 was appointed as president of the company.
- 8 Q: I just want to make sure, ---
- 9 A: You know.
- 10 Q: --- I'm walking you through the information.
- 11 You're giving me a lot here. But you're trying
- 12 to tell me that you were the named president of
- 13 Direct Air and that had no consequence?
- 14 A: Correct.
- 15 Q: It gave you no responsibility on the financial
- 16 runnings of the company or the company's debt; is
- 17 that correct?
- 18 A: I would say so, yes.
- 19 Q: And it also meant that you did not need to have
- 20 any oversight into the finances of the company?
- 21 A: No.. I was never allowed in that area. I
- 22 couldn't determine who was being paid, you know,
- 23 checks, vendors.
- 24 Q: Why not?
- 25 A: I wasn't allowed. You know, my job was to go out

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- 1 and get marketing support from the communities,
2 which I did, and when it came time to pay for
3 those, I had to fight tooth and nail every week
4 to try to get them paid on a timely basis. I
5 mean, I'm sure you have the accounts payable
6 schedules, and you can see how delinquent they
7 were on who they paid. Those decisions were
8 never, never, never ever, once, even though I had
9 asked for checks to be paid to certain vendors,
10 that was not my, that was not my call, and at
11 most -- I can never remember them paying anyone
12 that I requested, and these were people I bought
13 advertising from all the time. It got to be very
14 embarrassing.
- 15 Q: So you understood at a certain point, even
16 without access to detailed financials, that
17 Direct Air was not paying its bills; is that
18 correct?
- 19 A: You'd have to be blind and deaf and dumb not to
20 know that.
- 21 Q: How early did you come to that realization that
22 Direct Air wasn't paying its bills?
- 23 A: I don't know. I don't know, early on.
- 24 Q: In the first year of operation?
- 25 A: No. I don't think the first year, because Bob

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- 1 was discussions with Mary and discussions with
2 Judy and Kay, you know.
- 3 Q: At the point that vendors were not being paid,
4 did it make you aware that Direct Air was not
5 bringing in enough money to cover its expenses?
- 6 A: I don't think I looked at it that way.
- 7 Q: How did you look at it then?
- 8 A: It was, I thought it was more of a control thing,
9 that they were just calling the shots, period,
10 and you know, it got to a point where even with
11 marketing and the ads that I was having created
12 by my staff, you know, they would override. They
13 would micromanage and go around me to work with
14 my staff, you know.
- 15 Q: So you didn't believe that Direct Air was in
16 financial trouble when they couldn't pay their
17 bills. You thought it ---
- 18 A: No. I may have. I mean, from time to time, I
19 knew that we were not doing, we weren't doing
20 well.
- 21 Q: Do you have an understanding whether, on a yearly
22 basis, Direct Air was making or losing money?
- 23 A: We were losing money.
- 24 Q: Do you recall ---
- 25 A: To what, to what magnitude, I don't know.

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1 Q: Do you recall any years in which Direct Air made
2 a profit?

3 A: No. I don't recall.

4 Q: So it would be fair to say that your
5 understanding is Direct Air lost money every year
6 it operated?

7 A: Yes.

8 Q: And it sounds like from your testimony that
9 there's some level of distrust, and please feel
10 free to add a different word if that's not
11 accurate, between you and Judy Tull and Kay
12 Ellison. Is that fair to say?

13 A: Yeah, absolutely. Well, bottom line is they
14 walked out. I was left holding the bag and
15 facing the music here, and that's when eyes
16 really became open as to what was going on here.
17 I mean, their character showed. I face the music
18 every day in this community, and it's very, very
19 difficult.

20 Q: And did these feelings come about because of the
21 way Direct Air closed or was it something ---

22 A: No.

23 Q: --- that existed the whole time?

24 A: It existed the whole time.

25 Q: Why didn't you leave the company?

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1 A: I couldn't. I felt that I -- First of all, there
2 were circumstances financially. I needed the
3 income. My wife developed terminal cancer in the
4 early years. That was a difficulty. That was a
5 problem. I have a permanently disabled daughter
6 that I'm taking care of. And so, you know, here
7 I'm the, the, the face of Direct Air and brought
8 them into this community, not to count the
9 friends of Bob's and mine that we brought in as
10 investors, and we had an obligation to try to get
11 the company whole, and that was the promises that
12 were always made by Judy and Kay.

13 We counted on them. They've done this
14 before, you know, built airlines, and, and the
15 whole point was, "We can get over the next
16 hurdle. We just need, you know, some more money
17 in," and then that's when, you know, Bob was
18 constantly throwing money in to address these
19 issues, and Kay was very good at convincing
20 everybody, you know.

21 So the objective was to sell the company,
22 and so that's why we worked hard to keep flying
23 and keep growing it, and, and that's what I did.
24 I grew the airline from zero to two million
25 passengers. That was my responsibility, the

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1 strategic alliances building in all the
2 communities and improving economic impact and
3 conditions in the communities. That's what I
4 did.

5 Q: Marshall Ellison also described his role as part
6 with systems and part with marketing.

7 A: What part?

8 Q: That's my question to you. What ---

9 A: You could write what he did on the back of a
10 stamp. He was a problem, and I'm sure, as you go
11 through your questions and whatnot with everybody
12 that you talk with, they'll all come to the same
13 conclusions that I'm giving you.

14 Q: Why do you say that Marshall Ellison was a
15 problem?

16 A: Because he was, he was the spouse of Kay, who was
17 the controlling partner of the company, and he
18 thought that he was invincible. He, he knew
19 nothing about marketing. It was obvious. Staff
20 recognized it. Staff would huddle around me
21 constantly, which would upset Kay because I was,
22 as she called it, building camps, because they
23 wouldn't go to him, and he really didn't do
24 anything.

25 I mean, he sat at a desk and he took care

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1 and you know, I knew Myrtle Beach and the people
2 here, and I knew what they needed in this
3 community, at least I felt I did, and I felt that
4 I could grow the business here, and, and, and I
5 did, but that's where my focus was. I was very
6 passionate about that. I mean, I put more hours
7 in than anybody. I mean, it was not unusual for
8 me to come at 4:00 in the morning and work till
9 8:00 at night. I mean, so ---

10 Q: So you didn't have an understanding about the
11 regulations. Did you rely on anyone at Direct
12 Air to know and understand the regulations about
13 charter airlines?

14 A: I only knew what I was told by Judy and Kay.

15 Q: And what did they tell you about regulations for
16 the charter airline that Direct Air would be
17 subject to?

18 A: I knew about the escrow account, that money would
19 have to go into an escrow account until the plane
20 landed, and that was in general. Then there were
21 conditions around that.

22 Q: What money needed to be put in an escrow account?

23 A: Well, that's where the confusion is. You know,
24 to this day, I still don't have a hard core
25 answer on that because I never spoke with a DOT

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- 1 attorney or regulatory person. I only got my
2 information from Judy and Kay, and it, it
3 differed. But I was told and, and Bob was told
4 and others were told that the escrow account, the
5 only thing that needed to remain, or could not be
6 used in escrow, I think, this is, I think, again,
7 was the fare, and all the other things were not
8 protected by escrow. The ancillaries, the, you
9 know, seat assignments and children and, you
10 know, those, those fees, the Family Ties
11 membership fee, that money could be used.
- 12 Q: And your understanding ---
- 13 A: And that was, yes, ---
- 14 Q: --- is based on a conversation with Judy or Kay?
- 15 A: It was told to us. It was, you know, it was
16 conversation that was ---
- 17 Q: Told to you by who?
- 18 A: Judy and Kay. Kay, Judy -- Kay said that she
19 spoke to the DOT attorney and, you know, because
20 there was a question as to what we could use and
21 what we couldn't use, and I found out later on,
22 post-bankruptcy, that that was not the case, that
23 that conversation never happened at all.
- 24 Q: Are you aware that Direct Air had DOT, Department
25 of Transportation attorneys or that they had --

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1 more trips home or bring family in to see them.
2 It would be a nice gift to the community, and it
3 would serve our needs of at least not losing
4 money but breaking, making money on, on the
5 flight possibly going out, right? And so that's
6 how we started Family Ties, and it was just this
7 destination, Myrtle Beach, to the community, and
8 it was received, it was received very, very well.
9 When I first brought it up, it was, you know, I
10 think more people were not interested in it. That
11 was the days when we did have a committee vote,
12 whether we wanted to do this or not, very, very
13 beginnings, before we started flying, right?

14 So I think -- I don't remember the
15 numbers, but it was something really ridiculous.
16 We, you know, advertised one ad in the paper for
17 a weekend and, "Come to the airport. Meet the
18 new owners of the airline that's a community
19 airline," and, "Have some cake and coffee," and
20 you know, "and you can buy these certificates,"
21 and we spent our time explaining to them and
22 really trying hard to be part of the community.

23 That's what we were trying to inspire and
24 to, "You can use these tickets," you didn't have
25 to have a flight, you didn't have to have a date.

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1 You would pay a certain flat fee for it. It
2 included a membership program that they could,
3 that entitled them to buy as many certificates as
4 they wanted. I think maybe limited up to ten or
5 20 certificates, but they can put them in their
6 drawer, and if they wanted to bring their
7 grandson and granddaughter down for vacation,
8 they could send the certificates up to them and
9 bring them in, you know, that type of thing.

10 That's what the whole program was, and it
11 was received very well. We expected to sell, I
12 don't know, 7,000 tickets or something that
13 weekend, and we sold like 15,000 transactions or
14 something. It was an immediate hit, and it gave
15 us a boost of income, because we were, had the
16 membership fees that we can use, and it was
17 around --

18 I mean, it wasn't a genius move. It was
19 just -- Spirit, I think, at the time was having
20 these membership fees, that everybody was trying
21 to figure out how they were doing these low
22 fares, you know, by becoming a member of a Spirit
23 club or whatever. So all I did was try to find
24 where the need was, the benefit to the community,
25 and come up with a program that would work. From

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1 charges, I guess you'd call them, right? So Kay
2 moved down to Myrtle Beach with her family,
3 Marshall and sons and whoever else, and they
4 bought a house down here, and then she started
5 coming in to the office every day, and then at
6 that point, she basically decided that we could
7 run the sales more often, and so the annual sale
8 became the, "Annual Sale Back by Popular Demand,"
9 or extended or, I mean, you've seen the ads, I'm
10 sure. I mean, it got to a point at the end that
11 we were having sales every day just about, either
12 an extension or a new sale.

13 Q: Were you part of any decisions about when to
14 offer a Family Ties sale?

15 A: Only the initial one.

16 Q: Only the very first Family Ties sale?

17 A: Only the very first one. Then after that, Kay
18 would come in to the office, in to my office or
19 she would go right over to the marketing
20 department and say, you know, "This is what we're
21 doing. Create an ad," you know.

22 Q: It was your understanding at the time that the
23 membership fee for the Family Ties tickets could
24 be immediately used ---

25 A: Yes.

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- 1 Q: --- by Direct Air?
- 2 A: Yes.
- 3 Q: In other words, that Family Ties membership
- 4 portion did not have to go and stay in the escrow
- 5 account until the flight was flown?
- 6 A: Oh, correct. It could be used right away.
- 7 Q: And where did your understanding of that come
- 8 from?
- 9 A: That was expressed either -- I don't remember who
- 10 in particular, Judy or Kay..
- 11 Q: Do you know where they got their understanding
- 12 from?
- 13 A: Clueless, I mean, that was not my world. My
- 14 world was down the hall in marketing, and I
- 15 didn't want to be bothered in that. I mean, I
- 16 had enough.
- 17 Q: And did you understand that each Family Ties
- 18 ticket ---
- 19 A: Yeah.
- 20 Q: --- included a membership fee?
- 21 A: Yes.
- 22 Q: Of approximately 40 to \$60, correct?
- 23 A: I think it varied, yes. I'm not sure what the
- 24 first one was. I don't know if it was that steep
- 25 or not. I really don't recall.

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1 Q: So Family Ties was essentially a way that Direct
2 Air could generate revenue that it could use
3 immediately from the membership fees, correct?

4 A: Yeah. But that was not the intent from the
5 onset. It was more of solving a problem of the
6 flight being profitable or breaking even, the
7 return flight, right, to generate an outbound
8 flow of traffic. After that and it was
9 successful and I guess it was recognized that
10 there was, you know, additional revenue coming in
11 from this, maybe somewhere where we may have
12 needed an influx of cash or something later on
13 down the road. I don't know timelines here, I
14 don't know when we had the second one, it
15 could've been a year later, you know, or six
16 months later, it was determined that we should
17 have another sale.

18 Q: To generate revenue ---

19 A: And I think -- Yeah, I would think that that --
20 Yeah, it wasn't because of the, at least I don't
21 think it was, or maybe it's just something I
22 suspected. I really don't know. I don't think
23 so. It just was made obvious that we need to
24 have another sale. So I don't know what other
25 people's motives were, but I suspected, I guess,

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1 that it was for additional revenue, as, as well
2 as boosting sales.

3 Q: Additional revenue coming from the membership
4 fees, correct?

5 A: Yeah, and, and filling seats, you know, because
6 we were, we were opening up new destinations. I
7 mean, we went from three destinations to 18
8 destinations, from zero sales to two million
9 sales in a five-year period. So as new, new
10 cities and destinations were added -- In the
11 beginning, also, remember, it was only Myrtle
12 Beach going to somewhere. Then after that,
13 after, you know, our initial launch and whatnot,
14 Judy and Kay opened up other destinations, excuse
15 me, outside of Myrtle Beach, and then Kay or Judy
16 introduced, "We're going to have a sale for that
17 destination in the Family Ties sale," but then it
18 was even tied in with the launching of the city,
19 you know, to create a buzz.

20 Q: Are you aware whether anyone at Direct Air did an
21 analysis of what price needed to be charged in
22 the Family Ties tickets in order to cover costs?

23 A: No, because I think it was always changing. I
24 mean, you know, I know we took increases on it
25 towards the end, but I think that was just -- I

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1 A: Correct.
2 Q: And at some point, you understood that there was
3 a shortfall?
4 A: Correct.
5 Q: And that was prior to the closing down of the
6 business?
7 A: Yes.
8 Q: And even prior to the acquisition by Avondale?
9 A: Yes.
10 Q: And was it approximately at the time that Direct
11 Air was looking to be acquired by Vision that you
12 first learned about the shortfall?
13 A: I'm not sure if Vision was the first airline that
14 came in. I don't know if Vision was the first
15 airline, but yeah, that's when I first learned
16 that, you know, we were using the escrow money.
17 Q: But a shortfall, the term itself should mean that
18 there was supposed to be a certain amount of
19 money and there was less than that. Is that your
20 understanding ---
21 A: Oh, no.
22 Q: --- of the word shortfall?
23 A: I never knew of that, you know, no. I thought
24 you meant that money was taken, shortfall meaning
25 money was taken legitimately, they just, you

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- 1 really reaching into my memory on this, it may
2 have come up during the sale of the airline,
3 maybe. I'm really reaching, you know.
- 4 Q: So it's your ---
- 5 A: I don't, I really don't -- I can't swear to it,
6 to be honest with you.
- 7 Q: So it's your testimony today, you can't
8 specifically recall any conversations with
9 counsel in which a shortfall was addressed?
- 10 A: Correct.
- 11 Q: Were you involved in the due diligence process of
12 bringing Avondale onboard?
- 13 A: No. What, what was involved, you mean, in the
14 due diligence?
- 15 Q: No. Were you directly involved in the ---
- 16 A: Oh, no.
- 17 Q: --- due diligence process?
- 18 A: Absolutely not, no. Directly involved, I think I
19 had one conversation with Vision one time to
20 explain to them about the marketing. In the very
21 beginning, they wanted to know how the marketing
22 was done, et cetera.
- 23 Q: And Vision was an early suitor for Direct Air?
- 24 A: Yes. And then there was Sky King. I don't
25 recall any conversations with Sky King. And then

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- 1 A: Yeah, okay.
- 2 Q: The date is September 12, 2011.
- 3 A: Yes.
- 4 Q: And it has an attachment, Escrow 2011 to 2012.
- 5 Do you recall receiving this email?
- 6 A: I don't know. This would be something I would
- 7 just, wouldn't be interested in, you know. I
- 8 don't know if she was -- I don't know what the
- 9 purpose of it is to begin with. We all had
- 10 business cards, unless there's a different phone
- 11 number. No, that's the right number.
- 12 Q: If you could, turn to the attachment to the
- 13 email.
- 14 A: Yes.
- 15 MS. MURPHY: AND FOR COUNSEL ON THE
- 16 PHONE, THIS IS EXHIBIT F TO
- 17 THE ASSET PURCHASE
- 18 AGREEMENT.
- 19 Q: It's a spreadsheet entitled 2011 and 2012 Escrow
- 20 Revenue as of 9/12/2011. Have you seen this
- 21 spreadsheet before?
- 22 A: No. I don't recall ever seeing that, no.
- 23 Q: Despite the fact that the email suggests that you
- 24 were sent a copy of it?
- 25 A: I may not have even looked at it, but I don't

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1 recall ever seeing this.

2 Q: Do you have any understanding about what the
3 information in this spreadsheet represents?

4 A: Well, by title, it's indicating escrow revenue,
5 that money that was put into the escrow account,
6 and I would imagine this would have to balance
7 out to the escrow balance. It's showing, it
8 looks like, the makeup of it, how much was pre-
9 purchased baggage, which would be ancillaries,
10 right? Gross revenue, I would imagine was the
11 amount of the deposit. I don't know. Passengers
12 to purchase bags, that's probably an assumption
13 based upon performance, of what our passengers
14 did in the past, of how many bags they may have,
15 you know, normally taken and what they would pay
16 for it, because as time went on, you started
17 paying for bags and, like I said, everything but
18 sitting down, right? Bag cost, \$35, maybe that's
19 what we were charging at the time to, for a bag,
20 and it would generate additional revenue.

21 Q: Let's take ---

22 A: Which may tie-in with the, remember, I said a few
23 moments ago that Kay had explained there was
24 revenue that was coming in when there was a
25 discussion on, of the escrow account with Hank?

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1 Q: Yes.

2 A: Well, additional revenue there, that looks like
3 some sort of a forecast that Kay must have done
4 based upon, on seats or something, right? That's
5 what I'm looking at now, and I don't know if I'm
6 right or not, but that's how I would read this.

7 Q: Do you see the block at the bottom entitled,
8 "Family Ties"?

9 A: Yeah.

10 Q: Have you ever seen the information like this for
11 the Family Ties program?

12 A: No. No, I have not.

13 Q: You mentioned that Hank Torbert came in
14 indicating he had airplanes?

15 A: Yeah. That was part of, you know, when he
16 presented to us he was interested in the airline,
17 he had indicated that he had access to a hundred
18 million dollars, which was, you know, music to
19 our ears, that he had aircraft, which was the
20 same type aircraft, the A319's or 20's that we
21 had used from Virgin America and Jet Blue, which
22 everybody loved and it was great performance, you
23 know. Fuel burn went from, I think it was 1100
24 gallons an hour or something like that down to
25 800 gallons an hour. I mean, we knew that the

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1 brought the money to the table that they were
2 supposed to bring, and there were conflicts.

3 We kept leasing planes from them, and we
4 couldn't get them to come to close, and it was
5 aggravating Judy and Kay and the rest of us, and
6 finally, Jeff Conry had called Judy and Kay, and
7 I witnessed that call. I happened to be sitting
8 in Judy's office that day discussing some
9 marketing issues and the call came through, and
10 Jeff was telling Judy that Sky King was looking
11 to close the deal eventually and then they were
12 going to move the company to California and the
13 fact that none of us would move to California, we
14 would be in violation, la la la, la la la, and in
15 other words, they were going to throw the
16 original deal out and we would lose the company.
17 I don't have to tell the hair on the back that
18 went on Judy and Kay at that point and
19 immediately withdrew the deal.

20 Jeff, at the same time, said, "By the
21 way, I've met some investors. I know they have a
22 lot, a lot of money. They don't have any
23 experience in airlines, and they're looking to
24 get involved in a company like yours," and blah,
25 blah, blah. And so that was the first mention,

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- 1 knew any of this or if this was Jeff and, and
2 Donald, because they had a problem in the past.
3 I don't know the details of it.
- 4 Q: You mentioned that Jeff Conry made statements to
5 Judy and Kay that you heard regarding Sky King's
6 intention to, after closing the deal with Direct
7 Air, essentially clean house. Is that a fair way
8 to characterize it?
- 9 A: No, clean house in a, in a way that we would
10 refuse to move, which would break the contracts.
- 11 Q: Did Jeff Conry make any representations that
12 you're aware of regarding Sky King's financial
13 inability to fund the deal?
- 14 A: Oh, no. They had more money than air. They own
15 some movie company and making big movies, and you
16 know, this was just something he, I think it was
17 explained that one of the Yari Brothers always
18 had a passion for air or something. I don't
19 know.
- 20 Q: Did you subsequently learn or were you
21 subsequently told that Jeff Conry's
22 representations about Sky King's intention were
23 false?
- 24 A: You know, I don't recall ever -- I never heard it.
25 from Sky -- Wait a minute. I don't remember.

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1 Q: And what was the information that Jeff Conry was
2 conveying during this conversation?

3 A: That they were going to skin us alive if we went
4 through the deal, and so that's all they had to
5 hear, that they were being, you know, scammed,
6 right? And so Jeff said, "By the way, I've run
7 into these people who've got a lot of money," and
8 that's when he explained about Avondale. I don't
9 know if he used the name Avondale. And he
10 indicated that they were a minority group and
11 they had all this, a million dollars investment
12 money, blah, blah, blah, and he would see if he
13 could get more information and maybe -- and then
14 he called back and said, "Would you like to
15 schedule a meeting with them?"

16 And we said, "Sure," and that's, I think
17 that may have been around June or July, but I'm,
18 I'm not sure on dates.

19 Q: With regards to the operations and finances of
20 Direct Air, what changes were made after the
21 acquisition? How did the company look different?

22 A: Well, from, from each area, I guess, you know,
23 you have to answer for, my business went on as
24 usual, with marketing. Nothing really changed
25 there. From operations, I guess there were

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1 differences because there was a different
2 reporting system, and ---

3 Q: Did you have -- I'm sorry to interrupt. Did you
4 have the same ability to make decisions about
5 marketing and strategy as you had before the
6 acquisition?

7 A: I never had the power to make the decisions
8 without getting approval.

9 Q: So it wasn't ---

10 A: Even an ad.

11 Q: So, after the acquisition, it wasn't that big of
12 a change because it was simply a different
13 reporting structure for you too?

14 A: No. It may have been a little bit easier for me.
15 I think that Jeff gave me more leeway. In fact,
16 it was pointed out that, you know, Marshall, you
17 know, even, even though he was involved, he had
18 certain destinations that I guess he would try to
19 handle, it was being done more by the people in
20 that destination, but -- And so Jeff said, "Look,
21 here's what I want you to do. Tell me the
22 destinations that you want, and let him take care
23 of his, and eventually he'll sink," which struck
24 me kind of, you know, odd, but I took all the
25 ones that I had developed, you know, all the big

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